



ANCIENT ISLAMIC LEGAL SYSTEM IN INDIA: AN OVERVIEW

Hemant Kumar Yadav

Ph.D. Student, University of Lucknow.

1. INTRODUCTION:

The management of justice is an essential commitment of the nation. If men were gods and angels, no law benches would be indispensable however even then the cynics might refer to the squabbles amongst idols, predominantly in the background of idols. As it is, we find that though male may be a slender subordinate than the angels, he has not yet shelter off the brute. Not far under within the man, there prowls the physical and the physical is appropriate to disruption unattached on times, to control and device that corporeal and to stop worsening of development, humankind prerequisite of the rule of law. Development likewise need the rule of law for demanding all irregularities and holes from the contract and normal of conduct of the public. Being social, influences are certain to rise amongst us. For the resolution of those disagreements, development want instructions in the form of laws and forums to compensation the crimes in the form of courts. Laws and judiciary have continuously gone organized.

The Tughlaq era saw the comprising of the code of civil procedure called Fiqha-e-Feroze Shahi. The code prescribed particulars of the procedure and the law in many substances. It was transliterated in Arabic and was understood into Persian under the rules of Feroz Shah Tughlaq. The procedure laid down was followed till the sovereignty of Aurangzeb after it was substituted by Fatawa-i-Alamgiri written in 1670. According to Fatawa-i-Alamgiri, the Qazi first pleaded and wanted God's help in the government of justice. He was assisted by Katib. The Qazi was obliged to understand that the suggestion was suitably verified. The plaintiff was termed the Muddai and the respondent was named Muddaa Allah. The plaintiff was called Daawa although the complaint in criminal cases was named Istaghsha. A party could have an agent as vakil or an attorney to define his situation. The scheme of management of justice and laws is the formation of healthy supposed out efforts on the part of the then British Government. No less than four law commissions and other committees were employed throughout the years 1834 to 1947 to give sketch to the construction. In the substance of succession and other related stuffs, the parties were left to be governed by the peculiar law. While the influence of the English common law was noticeable in the organized law of India, departure from the common law was also made when, it was measured, necessary, to native requirements. In reply to the condemnation that the modern legal structure is unsuited to the Indian conditions and slightly unacquainted disconnected on the Indian soil, it may be experimental, as stated by the Law Commission, that though some of the vicissitudes in the primary retro of British rule in India were prejudiced by the scheme dominant in England in those days, the deviations did not have the effect of conquering the personal laws.

In Islam, there is no leaving between the earthly and the blessed. The law is enclosed with confidence. Sharia, or Islamic law, encouragements the legal code in greatest Islamic countries, but the degree of its influence differs extensively. Islamic Sharia is not a naturally identifiable set of rules that can be mechanically applied, but a long & impartially miscellaneous intellectual custom. According to Islamic teaching, Sharia is visible in wonderful signs that must be agreed by persons. The law is ensuing from four key reasons:

- the Quran,
- the hadith,
- Ijma,
- Qiyyas,

The Mughal Judicial System was strong and operated professionally. The monarch was uppermost in all dilemmas of justice. At the lordly equivalent was the emperor's court – the court of final appeal. It tried both civil and criminal cases, and had appellate and revisional powers. There were distinct courts for soldierly problems. Revenue cases were dispensed by courts set up exactly for the willpower. The magnificent dewan chaired over the principal revenue court. Appeals from revenue courts lay to him at the central level. At the provincial level was the diwan-i-subah who dealt with appeals in contradiction of the amil's orders. He also had original powers in revenue cases. There was also a Sarkar level judiciary who entertained appeals from the pargana amils. Jahangir had connected a golden chain 28 meters long with 60 bells. Anybody can ring these bells at any time to follow justice.

The Mughals played a very significant charm in the judiciary system in India. They carried novel vicissitudes in judiciary system and provided a countless effect on judiciary system in India. Judicial system of Mughal India has complete reassurance in the current bench system in India with some nonconformities. The over-all features of the Mughal Administration which is following;

- (i) a robust and disciplined Government underwriting to peacetime and command,
- (ii) a extremely consolidated form of administration with an widespread administrative technology
- (iii) an age of Rebirth in Art and literature,
- (iv) A kingdom of agreement in which dissimilar ethnic rudiments were more or less submissive and subsidized their ability, aptitude and understanding to make the government wealthy.

Ibn Hasan or, a noted historian of Mughal India, points out that the responsibilities of a Muslim Kings in an Islamic State require him to rule in agreement with the Quranic law and to device Shariah in his territory.

2. SLAVE DYNASTY TO SHER SHAH:

The period of the settled government commenced from the Slave Dynasty (1206-1290 A.D) and continued during the reign of Khalji dynasty (1290- 1321), the Tughlak dynasty (1321-1413), dynasty (1451 - 1526) and the Sur dynasty (1539-1555). They recognized systematic tribunals and selected Quaziz and Muftis all over the nation. It seems that two types of tribunals occurred — the court of Shariat and the Court of Common Law. The Court of Canon Law used to contract with the cases linking the personal law of the Muslims and the violation of spiritual injunctions. The Court of Common Law obvious the cases of a earthly environment, both among Muslims and non-Muslims. As regards non-Muslims, Hindus, Buddhists etc. they were subject to the tribunals of the country, but the cases which complicated their individual law were definite by the Court of Common Law assisted by the educated men of their community.

3. UNDER THE MUGHAL EMPERORS:

In A. D. 1526 Baber recognized the Mughal Kingdom. He was prospered by his son Humayun. Both charted the policy of Sher Shah in the administration of law and justice, and the ulemas appear to have exercised substantial inspiration during this age. A radical change happened throughout the time of Akbar, and the age marks the collapse of the Ulemas. Though "Dinillahi" and the conferences of scholars going to dissimilar beliefs held at Ibadat Khana devastated the orthodox Sunni School to some degree, the supremacy of Islamic Law was not completely nonexistent. The judicial officers such as the Chief Qazi and the Qazis used to try cases according to the Muslim Law, and in conformatism with the Common law, i.e., o edicts, ordinances and instructions issued by the Emperor. Jahangir, to some degree, reviewed the policy of Akbar. The Institutes of Jahangir show that he prohibited the cutting of noses and ears and death penalty could not be imposed lacking the authorization and validation of the Emperor. He was also a great jurist, and had dedicated the Quran to remembrance. In 1665, the Emperor ordered for the assembling of the celebrated code, the Fatawa-i-Alamgiri which comprises all the indispensable values of the Hanafi system of Muslim law. Islamic criminal law was offered with compassion during his supremacy. Capital punishments were virtually totally unfamiliar under Aurangzeb.

CONCLUSIONS:

It is evident from the literature that the ancient Islamic period was full of legal reforms and changes. The era Jahangir and Akbar was the period of legal reform and social justice. The starting period of the Islamic era in India was based on canon law but gradually shifted to the social justice and welfare laws for the benefit of the both Hindu and Muslim community. The laws were justified in the protection of the fundamental rights of the both communities.

REFERENCES:

1. S.D. Sharma, Administration of Justice in Ancient India, New Delhi: Harman Publishing House, 1988, p.170. 22
2. R.C. Majumdar, The History and Culture of the Indian People: The Mughal Empire, Vol. VII, Bombay: Bhartiya Vidya Bhavan, 1974, p.545. 26
3. <https://www.importantindia.com/12898/mughal-judicial-system/> (Assessed on 03-01-2018)
4. Husain, Wahed, B.L, Administration of Justice during the Muslim rule in India with a History of the origin of the Islamic Legal Institutions,published by idarahi-i-adabiyat-i-Delhi,frrst print 1934,second reprint1977 ,Delhi,pp-1 03-106.
5. ibid
6. Hasan,Ibn, The central Structure of the Mughal Empire and its practical Working up to the year 1657,Munshiram Manoharlal, New Delhi, New Delhi, first published in 1936,reprinted in 1970,p,306.
7. K. K. Abdul Rahiman," History of the Evolution of Muslim Personal Law in India" Journal of Dharma: Dharmaram Journal of Religions and Philosophies, Pages: 249-263
8. ibid
9. Wahed Husain, Administration of justice during the Muslim Rule in India. (Calcutta: University of Calcutta), pp. 14-16.